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10 Attorneys for Secured Creditor Boston Private Bank  
& Trust Company

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:  
272 E. Santa Clara Grocery, LLC  
Debtor.

CASE NO. 13-53491

## CHAPTER NO. 11

**SECURED CREDITOR BOSTON  
PRIVATE BANK & TRUST COMPANY'S  
NOTICE OF CLAIM OF TITLE TO  
RENTS & PROFITS, OR,  
ALTERNATIVELY, SECURITY  
INTEREST IN RENTS & PROFITS AND  
NON-CONSENT TO USE OF CASH  
COLLATERAL**

[No Hearing Required]

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1       **TO DEBTOR, DEBTOR'S ATTORNEY, AND ALL INTERESTED PARTIES:**

2           NOTICE IS HEREBY GIVEN that, pursuant to §§552(b), and 546(b) of Title 11 of the  
3       United States Code (the “Bankruptcy Code”), *Butner v. U.S.*, (1979) 440 US 48, 54, and  
4       California Civil Code §2938(c), Boston Private Bank & Trust Company (“Boston Private”)  
5       claims title in the rents and profits in that certain real property commonly known as “272 E. Santa  
6       Clara Street, San Jose, CA 95113,” Assessor’s Parcel No. APN: 467-24-111 (the “Property”).  
7       Boston Private’s title arises from a certain loan it made to Kimomex Santa Clara, LLC,  
8       predecessor owner to the debtor and debtor-in-possession, LLC (the “Debtor” or “Santa Clara  
9       LLC”) in connection with the Property, which loan is secured by a deed of trust and assignment  
10      of rents as described below, as well as its pre-petition enforcement of that assignment of rents  
11      following Debtor’s default in the form of a May 17, 2013 written demand on tenant Grocery  
12      Outlet, Inc. pursuant to California Civil Code §2938(c), that also is described below. Boston  
13      Property acknowledges the lone published California bankruptcy case that has considered this  
14      issue, *DRMG, LLC v Green (In re Superior Acquisitions, Inc.)* (Bankr ND Cal, June 27, 2011,  
15      No. 10-13730, A.P. No. 11-1034) 2011 Bankr Lexis 2485 (the “DRMG case”). It is respectfully  
16      submitted, however, that the *DRMG* case was incorrectly decided and is not binding on this Court  
17      in any event.

18           NOTICE IS FURTHER GIVEN that, in the alternative and without waiving its claim set  
19      forth above, and in the event that the rents and profits of the Property are determined to be an  
20      asset of the Debtor’s bankruptcy estate, pursuant to §§ 552(b), 363(c)(2) and 546(b) of Title 11 of  
21      the Bankruptcy Code, Boston Private has a security interest in the rents and profits of the  
22      Property. Boston Private’s security interest arises from certain loans it made to the Debtor in  
23      connection with the Property, which loan is secured by a deed of trust and assignment of rents as  
24      described below.

25           NOTICE IS FURTHER GIVEN that, in the alternative and without waiving its claim set  
26      forth above and in the event that the rents and profits of the Property are determined to be an asset  
27      of the Debtor’s bankruptcy estate, pursuant to §§552(b), 363(c)(2) and 546(b) of Title 11 of the  
28      Bankruptcy Code, Boston Private has a security interest in the rents and profits of the Property.

1      Boston Private's security interest arises from certain loans it made to the Debtor in connection  
2      with the Property, which loan is secured by a deed of trust and assignment of rents as described  
3      below.

4      That certain Deed of Trust on the Property dated July 15, 2008 (the "Deed of Trust"),  
5      which was recorded on July 18, 2008, in the Office of the Santa Clara County Recorder as  
6      Instrument No. 19928835.

7      That certain Assignment of Rents dated July 18, 2008, which was recorded on July 18,  
8      2008 in the Office of the Santa Clara County Recorder as Instrument No. 19928836.

9      That certain Subordination, Non-Disturbance and Attornment Agreement, dated June 30,  
10     2012, and recorded on September 13, 2012 in the Office of the Santa Clara County Recorder as  
11     Instrument No. 21851245.

12     NOTICE IS FURTHER GIVEN that pursuant to Bankruptcy Code §546(b), Boston  
13     Private hereby claims a perfected security interest in rents, issues and profits of the Property,  
14     Rents and Additional Rents.

15     NOTICE IS FURTHER GIVEN that all rents, issues and profits generated hereafter from  
16     the Property, Rents and Additional Rents are deemed cash collateral as defined under Bankruptcy  
17     Code §§363(a) and 363(c)(2)(a) and are subject to the perfected security interest held by  
18     Boston Private.

19     NOTICE IS FURTHER GIVEN that said cash collateral must be segregated and  
20     separately accounted for pursuant to Bankruptcy Code §363(c)(4).

21     NOTICE IS FURTHER GIVEN that on May 17, 2013, Boston Private gave written notice  
22     to Grocery Outlet, Inc. pursuant to California Civil Code §2938 that all rents are to be paid by  
23     said tenant to Boston Private and that therefore all rents due or owing thereafter are not property  
24     of Debtor's bankruptcy estate and must be segregated and turned over to Boston Private.

25     ///

26     ///

27     ///

28

NOTICE IS FURTHER GIVEN that Boston Private does not consent to the use of its cash collateral and hereby demands that such funds generated from the Property, Rents and Additional Rents be segregated and separately accounted for as required by law and turned over to Boston Private until such time as Boston Private may consent to such use.

Dated: July 1, 2013

HOPKINS & CARLEY  
A Law Corporation

By: /s/ Stephen J. Kottmeier  
Stephen J. Kottmeier  
Jay M. Ross  
Michaeline H. Correa  
Attorneys for Secured Creditor  
Boston Private Bank & Trust

**PROOF OF SERVICE BY MAIL**

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is The Letitia Building, 70 S First Street, San Jose, California 95113-2406. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On July 1, 2013, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**SECURED CREDITOR BOSTON PRIVATE BANK & TRUST  
COMPANY'S NOTICE OF SECURITY INTEREST IN RENTS &  
PROFITS AND NON-CONSENT TO USE OF CASH COLLATERAL**

in a sealed envelope, postage fully paid, addressed as follows:

**DEBTOR:**  
272 E. Santa Clara Grocery, LLC  
272 S. San Antonio Road  
Los Altos, CA 94022

**DEBTOR'S ATTORNEY:**  
**William J. Healy**  
Campeau, Goodsell and Smith  
440 N 1st St. #100  
San Jose, CA 95112

## 20 Largest Creditors

Andrew Lewis 475 S. San Antonio Rd. Los Altos, CA 94022	Ogen Perry 475 S. San Antonio Rd. Los Altos, CA 94022
ERAS Environmental, Inc. 1522 B Street Hayward, CA 94541	Rossi, Hamerslough 1960 The Alameda, Ste. 200 San Jose, CA 95126

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 1, 2013 at San Jose, California.

/s/  
JillAnn J. Meade

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SECURED CREDITOR BOSTON PRIVATE BANK & TRUST COMPANY'S NOTICE OF SECURITY INTEREST IN RENTS & PROFITS AND NON-CONSENT TO USE OF CASH COLLATERAL- CASE #13-53491